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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,482	01/20/2006	Eric Favre	WBL0003	2121
27268	7590	03/04/2010	EXAMINER	
BAKER & DANIELS LLP 300 NORTH MERIDIAN STREET SUITE 2700 INDIANAPOLIS, IN 46204				ALEXANDER, REGINALD
ART UNIT		PAPER NUMBER		
3742				
			NOTIFICATION DATE	DELIVERY MODE
			03/04/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

intreas@bakerd.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/565,482	FAVRE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Reginald L. Alexander	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 December 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 4,7-11 and 18-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 4,7-9,11 and 18-28 is/are rejected.  
 7) Claim(s) 10 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited device claims fail to further limit method claims 4 and 18, since the claims fail to recite any method steps for preparing a beverage.

Claims 18-22 recite the same subject matter as claims 23-27.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C 103(a) as being unpatentable over Favre in view of Lin.

There is disclosed in Favre a device for preparing a beverage, comprising a capsule carrier 9 comprising a bottom wall, an intermediate bottom wall in the form of a filtering wall 10 having a plurality of perforating spikes 22 and outflow orifices (col. 5, lines 47-52), and a lower cavity portion arranged between the filtering wall and the

bottom wall wherein the bottom wall comprises an outflow channel 24 surrounded by lips which protrude upwards and have openings or slots 27 for flow of beverage out from the capsule carrier.

Lin discloses that it is known in the art to provide, at a bottom wall of a beverage material carrier, an outflow channel 33 surrounded by lips 32 which protrude upwards, the lips having slots enabling liquid to flow through the lips and to the channels.

It would have been obvious to one skilled in the art to provide the bottom wall of Favre with the surrounding lips and slots taught in Lin, in order to delay rate at which beverage leaves the device. Thus, allowing for a richer coffee flavor.

Claims 4, 7 and 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond et al. '595 in view of Fond et al. '987.

Fond discloses a beverage preparation device, for preparing a beverage from a capsule containing a product to be brewed, the capsule including a flexible membrane and rigid shell, the preparation device comprising an injection head 1 comprising a perforating surface provided with a plurality of perforating spikes 25 having smooth tapered surfaces in the shape of a cone, and at least one water channel 4 arranged to supply hot water onto the perforating surface.

Fond '987 discloses the use of an injection head (figure 5) for use with a beverage capsule, the injection head including a perforating surface 55 having a shape which is convex when viewed from the outside and provided with a perforating spike.

It would have been obvious to one skilled in the art to modify the perforating surface of Fond '595 with that taught in Fond '987, in order to provide a degree of compaction to the beverage product within the capsule during use.

The prior art appears to meet all of the claimed method steps (perforating a plurality of holes and injecting water). In regards to the size of the holes and its dependence upon the compactness of the product within the capsule, applicant fails to positively recite this as a method step for preparing and beverage. Additionally, it is apparent that the prior art would satisfy such a limitation if a proper amount of product were provided to the capsule. And the product amount is an obvious matter of design choice to a user.

In regards to claims 20 and 25, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure.

Claims 8, 9 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond et al. '987 in view of Fond et al. '595.

Fond '987, as discussed above, discloses the use of device for preparing a beverage from a capsule, wherein the device includes an injection head comprising a perforating surface 55 having a shape which is substantially curved and convex, provided with a perforating spike on the surface and a water supply channel arranged to supply water onto the surface.

Fond '595, as discussed above, discloses the use of a plurality of perforating spikes on a perforating surface, the spikes having a smooth tapered shape without sharp edges.

It would have been obvious to one skilled in the art to modify the injection head perforating surface of Fond '987 with that taught in Fond '595, and provide plural spikes, in order to provide an even distribution of hot water to the product.

In regards to the spikes not having sharp edges, it is apparent that the spikes of Fond do not have sharp side edges.

#### ***Allowable Subject Matter***

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 22 December 2009 have been fully considered but they are not persuasive.

In regards to claim 11, applicant argues that Favre does not have a separate bottom wall.

Applicant, in making this argument cites several embodiments of Favre and the elements shown in those embodiments. Applicant should turn attention to figure 13 of Favre where the cited structural elements of the rejection are shown.

Applicant argues that Lin fails to disclose lips which have openings in the form of slots or holes configured to enable liquid to flow out from a capsule carrier at its lowest point.

What Lin shows in figure 3 appears to be a lip extending upwardly from an area of a base, the area including an outflow channel. The lips having slots to allow passage of beverage to the channel while creating a delay time within a lower cavity of the base.

While Lin does not show this arrangement at the lowest point of the cavity, such is moot when using the arrangement with the device of Favre. Favre shows the beverage exit channel at the lowest point of the cavity. The lips would surround this area by default. Thus, the claimed arrangement would be met by the combination of Favre and Lin.

Applicant's arguments with respect to claims 4, 7-9 and 18-28 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
Art Unit 3742